

LATHAM & WATKINS LLP

Andrew Clubok (*pro hac vice*)
 Sarah Tomkowiak (*pro hac vice*)
 555 Eleventh Street, NW, Suite 1000
 Washington, District of Columbia 20004
 Telephone: (202) 637-2200

BUTLER SNOW LLP

Martin Sosland (TX Bar No. 18855645)
 Candice Carson (TX Bar No. 24074006)
 2911 Turtle Creek Blvd., Suite 1400
 Dallas, Texas 75219
 Telephone: (469) 680-5502

Jeffrey E. Bjork (*pro hac vice*)
 Kimberly A. Posin (*pro hac vice*)
 355 South Grand Avenue, Suite 100
 Los Angeles, CA 90071
 Telephone: (213) 485-1234

Kathryn George (*pro hac vice*)
 330 North Wabash Avenue, Suite 2800
 Chicago, IL 60611
 Telephone: (312) 876-7700

*Counsel for UBS Securities LLC and
 UBS AG London Branch*

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

<p>-----</p> <p>In re</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,¹</p> <p style="text-align: center;">Debtor.</p> <p>-----</p> <p>UBS SECURITIES LLC AND UBS AG LONDON BRANCH,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,</p> <p style="text-align: center;">Defendant.</p> <p>-----</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p> <p>Adversary Proceeding</p> <p>No. 21-03020</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**PLAINTIFFS' MOTION TO COMPEL AND RESPONSE TO MOTION OF FORMER
EMPLOYEES TO QUASH SUBPOENAS**

UBS Securities LLC and UBS AG London Branch (together, “UBS”), plaintiffs in the above-captioned adversary proceeding (the “Adversary Case”) and creditors in the above-captioned chapter 11 case (the “Bankruptcy Case”), by and through their undersigned counsel, hereby move the Court (the “Motion to Compel”) for entry of an Order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) compelling Scott Ellington, Isaac Leventon, Matthew DiOrio, JP Sevilla, and Katie Lucas (the “Former Employees”) to comply with the *Subpoenas to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding* and *Subpoenas to Produce Documents, Information, or Objects or to Permit Inspection in a Bankruptcy Case or Adversary Proceeding* (together, the “Subpoenas”) by producing documents and deposition testimony and (ii) denying the *Motion of Former Employees to Quash Subpoenas and Brief in Support* (Dkt. No. 70) (the “Motion to Quash”). In support of this Motion to Compel, UBS respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion to Compel pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

3. By this Motion to Compel, UBS respectfully requests entry of an Order compelling the Former Employees to comply with the Subpoenas by producing documents and deposition testimony and denying the Motion to Quash.
4. As set forth more fully in the *Memorandum of Law in Support of Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* (the “Memorandum

of Law”) and the *Declaration of Sarah A. Tomkowiak in Support of Plaintiffs’ Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* (the “Tomkowiak Declaration”) (as set forth in the *Appendix of Exhibits in support of Plaintiffs’ Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* (the “Appendix”)), filed contemporaneously with this Motion to Compel, each of the Former Employees was served with deposition and document subpoenas more than a month ago and they and/or their counsel had notice of the Subpoenas as early as seven weeks ago. Since that time, UBS has extended the deadline for compliance multiple times, yet the Former Employees have failed to comply with any of the Subpoenas and have refused to even set a single date by which any of the Former Employees would fulfill his or her discovery obligations to produce documents or sit for deposition. UBS has repeatedly sought to find mutually agreeable dates and accommodate the Former Employees, all to no avail.

5. UBS is seeking discovery from the Former Employees in connection with its request for injunctive relief in the Adversary Case. The Court entered an *Order Granting Plaintiffs’ Motion for a Temporary Restraining Order* [Adv. Dkt. No. 21] (the “TRO Order”) on April 9, 2021; however, the TRO Order remains in place only until this Court’s decision on UBS’s requested preliminary injunction. In order to present evidence at a hearing on such motion, UBS needs an opportunity to seek discovery from the Former Employees—who were heavily involved in orchestrating the fraudulent conduct underlying the Adversary Case.

6. Based on the facts and argument set forth in the Memorandum of Law and the facts set forth in the Tomkowiak Declaration and exhibits attached thereto, UBS is entitled to the relief requested in this Motion to Compel as set forth in the Proposed Order.

NOTICE

7. Notice of the Motion to Compel shall be provided to (i) the Debtor and counsel to

the Debtor; (ii) counsel to the official committee of unsecured creditors; (iii) the United States Trustee; (iv) counsel to the Former Employees; and (v) all other parties registered to receive ECF notifications in this Adversary Case. UBS submits that such notice is sufficient and no further notice of the Motion to Compel is required.

CONCLUSION

WHEREFORE, UBS respectfully requests that the Court (i) enter an Order substantially in the form of the Proposed Order attached hereto as **Exhibit A** granting the relief requested herein and denying the Motion to Quash; (ii) granting UBS attorneys' fees and expenses related to the Motion to Compel; and (iii) grant UBS such other and further relief as the Court may deem proper.

[Remainder of this page intentionally left blank.]

Dated: May 20, 2021

Respectfully submitted,

/s/ Andrew Clubok

LATHAM & WATKINS LLP

Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: jeff.bjork@lw.com
kim.posin@lw.com

Kathryn George (*pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700
Email: Kathryn.george@lw.com

BUTLER SNOW LLP

Martin Sosland (TX Bar No. 18855645)
Candice Carson (TX Bar No. 24074006)
2911 Turtle Creek Blvd., Suite 1400
Dallas, Texas 75219
Telephone: (469) 680-5502
Email: martin.sosland@butlersnow.com
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS
AG London Branch*

CERTIFICATE OF CONFERENCE

The undersigned certifies that, on May 19, 2021, counsel for UBS conferred with counsel for the Former Employees regarding the relief requested in the Motion to Compel. Counsel for the Former Employees indicated that the Former Employees do not support the relief sought herein.

Dated: May 20, 2021

/s/ Andrew Clubok

CERTIFICATE OF SERVICE

I, Martin A. Sosland, certify that *Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: May 20, 2021

/s/ Martin A. Sosland
Martin A. Sosland

EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ²	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
UBS SECURITIES LLC AND UBS AG	§	Adversary Proceeding
LONDON BRANCH,	§	
	§	No. 21-03020
Plaintiffs,	§	
	§	
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL AND
DENYING MOTION OF FORMER EMPLOYEES TO QUASH SUBPOENAS**

² The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Upon consideration of *Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* (the "Motion to Compel")³ filed by UBS Securities LLC and UBS AG London Branch (together "UBS"), along with the Memorandum of Law, Tomkowiak Declaration, and Appendix filed in support of the Motion to Compel and the *Motion of Former Employees to Quash Subpoenas and Brief in Support* (the "Motion to Quash") (Dkt. No. 70) (collectively with the Motion to Compel, the "Motions"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motions is proper in this District pursuant to 28 U.S.C. §§ 1408-1409; and due, adequate, and sufficient notice of the Motions having been given; and having determined that the legal and factual bases set forth in the Motion to Compel establish good cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor it is hereby **ORDERED**:

1. The Motion to Compel is GRANTED;
2. The Motion to Quash is DENIED;
3. Messrs. Ellington, Leventon, DiOrio, and Sevilla shall produce in response to the Subpoenas documents in their possession, custody, and control, that are not duplicative of documents in the Debtor's possession, custody, and control, by no later than Friday, June 4, 2021;
4. Messrs. Ellington, Leventon, DiOrio, and Sevilla shall each sit for deposition regarding the topics set forth in their respective Subpoenas by no later than Friday, June 11, 2021;
5. Counsel to the Former Employees will inform counsel to UBS no later than June 3, 2021 the date upon which Ms. Lucas will become available to produce documents and sit for a deposition. Ms. Lucas will, within 14 days of the date she becomes available, produce documents

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Compel.

responsive to the Subpoena in her possession, custody, and control that are not duplicative of documents in the Debtor's possession, custody, and control, and sit for a deposition regarding the topics set forth in the Subpoena directed to her; and

6. Pursuant to Federal Rule of Civil Procedure 37, made applicable by Bankruptcy Rule 7037, the Former Employees shall pay UBS's reasonable expenses incurred in making the Motion to Compel, including attorney's fees.

End of Order

Order prepared by:

LATHAM & WATKINS LLP

By /s/ Andrew Clubok

Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: jeff.bjork@lw.com
kim.posin@lw.com

Kathryn George (*pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700
Email: Kathryn.george@lw.com

BUTLER SNOW LLP

Martin Sosland (TX Bar No. 18855645)
Candice M. Carson (TX Bar No. 24074006)
2911 Turtle Creek Blvd., Suite 1400
Dallas, Texas 75219
Telephone: (469) 680-5502
E-mail: martin.sosland@butlersnow.com
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS
AG London Branch*